

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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CYNTHIA HINES,

Plaintiff,

-against-

OVERSTOCK, COM, INC.,

Defendant.
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**MEMORANDUM
AND ORDER**

09-CV-991 (SJ)

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

Over the course of the last three weeks, the parties have deluged the Court¹ with a series of letter-briefs debating an apparently contentious issue -- the setting of a briefing schedule for class certification issues.² Plaintiff contends that her opposition to defendant's already pending motion to deny class certification, as well as her own cross-motion for class certification, should not be due until April 14, 2011, 30 days after the March 15th deadline for completion of fact discovery. Defendant, which filed its motion to deny class certification on January 14, objects to plaintiff's proposal, arguing that plaintiff's opposition, as well as her cross-motion, should be served by March 15, 2011.

Plaintiff is correct that class and merits discovery have not been bifurcated. In view of that circumstance, as well as the voluminous document production recently served on plaintiff

¹ Although the letters are directed to Judge Johnson, the parties' respective positions implicate discovery matters and therefore should have been addressed to the undersigned magistrate judge.

² The parties have reportedly reached agreement on the schedule pertaining to defendant's pending motion to dismiss. See ECF Docket Entry #63, at 1. Therefore, this opinion concerns only the class certification submissions.

by defendant, it would be unfair to require plaintiff to commence and complete depositions *and* serve her motion papers by March 15, 2011. On the other hand, as plaintiff has had the benefit of defendant's moving papers since January 14, 2011, the Court fails to see the need to afford plaintiff a full month beyond the March 15th discovery deadline for briefing class certification issues.

Accordingly, the Court sets the following schedule:

By April 1, 2011, plaintiff shall serve her response to defendant's motion to deny class-certification, and shall cross-move for class-certification;

By April 15, 2011, defendant shall file its reply to its pending motion and shall serve its opposition to plaintiff's cross-motion; and

Plaintiff's reply to her cross-motion is due by April 29, 2011.

Finally, the parties would be better served if counsel devoted their time and energy to completing discovery and briefing their substantive motions, rather than drafting an endless stream of replies and sur-replies on relatively trivial matters.

SO ORDERED.

**Dated: Brooklyn, New York
February 22, 2011**

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**